



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor  
Director

Maria R. Nold  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT**

### **ISSUED TO**

**Chesapeake Grain Company, Inc.  
Storm Water Registration No. VAR051797**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and Chesapeake Grain Company, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Chesapeake Grain" means Chesapeake Grain Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Chesapeake Grain is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “Facility” means the Chesapeake Grain Facility located at 5500 Bainbridge Boulevard in Chesapeake, Virginia, where Chesapeake Grain handles and stores grain in bulk. The Facility is leased from Davis Grain Corporation.
9. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
11. “Permit” means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which was effective July 1, 2014, and expires June 30, 2019. Chesapeake Grain registered for and received coverage under the Permit to discharge storm water associated with industrial activity from the Facility as documented by Registration Number VAR051797 effective September 17, 2014
12. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any

owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

14. “Regulation” means the General Virginia Pollutant Discharge Elimination System Permit For Discharges Of Storm Water with Industrial Activity regulation,” 9 VAC 25-151-10, *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Chesapeake Grain operates the Facility in Chesapeake, Virginia. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR051797. Storm water from the Facility discharges to the Southern Branch of the Elizabeth River (“Southern Branch”).
2. The Permit allows Chesapeake Grain to discharge storm water associated with industrial activity from the Facility to the Southern Branch, in strict compliance with the terms and conditions of the Permit.
3. The Southern Branch is located in the James River Basin and is listed in DEQ’s 305(b) report as impaired for polychlorinated biphenyl (“PCB”) in fish tissue, estuarine bioassessments, and low dissolved oxygen (“DO”). The sources of the PCB and estuarine bioassessments impairments are believed to include contaminated sediments; industrial point source discharges are among the suspected sources of the DO impairment. Chesapeake Grain has not been identified as a contributor to the impairments.
4. On April 19, 2011, Chesapeake Grain entered into a Consent Order (“2011 Order”) to resolve NOV #W2010-08-T-0003.

5. During a DEQ Facility inspection on March 17, 2014, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:

A discharge was observed consisting of stormwater and groundwater contaminated by process materials from the bottom of grain storage silos into a stormwater ditch. The discharge appeared to tan in color, opaque, had little clarity with chaff floating in the water.

6. Chesapeake Grain reported discharges of stormwater and groundwater contaminated by process materials from the bottom of the grain storage silos into a stormwater ditch on August 7, August 8, August 9, August 11 and August 12, 2014.

- 7. During a review of Facility records, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:

DEQ did not receive the Facility's 1<sup>st</sup> semi-annual (January 1, 2015 to June 30, 2015) Benchmark and Total Maximum Daily Load DMRs due by July 10, 2015.

8. Part II.F of the Permit prohibits unpermitted discharges to state waters.
9. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
10. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
12. The Department has issued coverage under no permits or certificates to Chesapeake Grain other than under the Permit.
13. The Southern Branch is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
- 14. Part II.C of the Permit requires the submittal of DMRs by the 10<sup>th</sup> day of the month after monitoring takes place.
15. Appendix A of the 2011 Order requires Chesapeake Grain to comply with all conditions of the Permit.
16. TRO issued NOV's No. W2014-12-T-0001 on December 9, 2014 and No. W2015-08-T-1012 on August 11, 2015 for the violations noted in paragraphs C(5) through C(15), above.

17. Based on the results of the March 17, 2014 inspection and follow-up information submitted by Chesapeake Grain, the Board concludes that Chesapeake Grain has violated Va. Code 62.1-44.5, 9 VAC 25-31-50, Part II.F and Part II.C of the Permit and the 2011 Order, as described in paragraphs C(5) through C(15), above.
18. On February 4, 2015, Department staff met with representatives of Chesapeake Grain to discuss the violations.
19. In order for Chesapeake Grain to complete its return to compliance, DEQ staff and Chesapeake Grain have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Chesapeake Grain, and Chesapeake Grain agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,375.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Chesapeake Grain shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Chesapeake Grain shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Chesapeake Grain, for good cause shown by Chesapeake Grain, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action

authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.

3. For the purposes of this Order and subsequent actions with respect to this Order only, Chesapeake Grain admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Chesapeake Grain consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Chesapeake Grain declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Chesapeake Grain to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chesapeake Grain shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseen circumstances beyond its control and not due to a lack of good faith or diligence on its part. Chesapeake Grain shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chesapeake Grain shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Chesapeake Grain intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Chesapeake Grain. Nevertheless, Chesapeake Grain agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Chesapeake Grain has completed all of the requirements of the Order;
  - b. Chesapeake Grain petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Chesapeake Grain.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chesapeake Grain from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

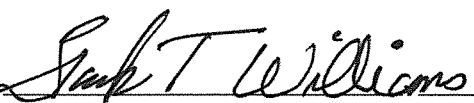
12. Any plans, reports, schedules or specifications attached hereto or submitted by Chesapeake Grain and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Chesapeake Grain certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Chesapeake Grain to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Chesapeake Grain.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. This Order hereby supersedes and cancels the 2011 Order referenced in paragraph C(4), above.
16. By its signature below, Chesapeake Grain voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8 day of October, 2015.

  
Regional Director  
Department of Environmental Quality

Chesapeake Grain Company, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/14/15 By:  PRESIDENT  
(Person) (Title)  
Chesapeake Grain Company, Inc.

Commonwealth of Virginia  
(C) City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 14<sup>TH</sup> day of AUGUST, 2015, by FRANK T. WILLIAMS who is PRESIDENT of Chesapeake Grain Company, Inc., on behalf of the company.

  
Notary Public

257763  
Registration No.

My commission expires: 10/31/17

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

Chesapeake Grain shall:

1. By October 1, 2015, submit to DEQ a Corrective Action Plan ("CAP") acceptable to DEQ, to address unauthorized discharges described in paragraph C(5), above.
2. By March 1, 2016, eliminate any unauthorized discharges from the Facility or secure authorization for such discharges from DEQ.
3. Beginning September 10, 2015, submit monthly progress reports to DEQ by the 10<sup>th</sup> of each month respectively. The monthly progress report shall include the status of implementation of the CAP.
4. Mail all submittals and reports required by this Appendix A to:

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462